

## SENATE BILL NO. 410

INTRODUCED BY J. BRUEGGEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "INTEREST" WITH RESPECT TO CREDIT TRANSACTIONS INVOLVING LOANS OF MONEY AND WITH RESPECT TO CONSUMER LOANS TO EXCLUDE FROM THE DEFINITION LOAN ORIGINATION FEES, POINTS, AND PREPAID FINANCE CHARGES; PROVIDING THAT A CONSUMER LOAN LICENSEE MAY CONTRACT FOR AND RECEIVE LOAN ORIGINATION FEES, POINTS, AND PREPAID FINANCE CHARGES; AMENDING SECTIONS 31-1-104, 32-5-102, AND 32-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 31-1-104, MCA, is amended to read:

**"31-1-104. Interest defined.** Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money ~~and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.~~"

**Section 2.** Section 32-5-102, MCA, is amended to read:

**"32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.

(2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are not primarily secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) deferred deposit loans provided for in Title 31, chapter 1, part 7; or

(ii) title loans provided for in Title 31, chapter 1, part 8.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money ~~and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.~~

(5) "License" means a license provided for by this chapter.

(6) "Licensee" means the person holding a license.

(7) "Person" means individuals, partnerships, associations, corporations, and all legal entities."

**Section 3.** Section 32-5-301, MCA, is amended to read:

**"32-5-301. Fees charged to consumers.** (1) ~~A~~ On any loan of money, a licensee may contract for and receive, ~~on any loan of money,~~ interest as provided under 31-1-112.

(2) On any loan of money, a licensee may contract for and receive loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2, for making the loan.

~~(2)(3)~~ If provided for in the contract, an additional fee may be charged for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement. The fee charged may be the greater of \$15 or 5% of the amount past due, not to exceed \$50. The fee charged for any past-due amount may be charged only once. Except as provided in subsection ~~(3)~~ (4), other fees may not be charged for default or extension of the contract by the borrower.

~~(3)(4)~~ (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period during which an installment is not scheduled to be paid by reason of the deferral.

(b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of \$15 or 5% of the amount currently due, not to exceed \$50.

(c) Other fees may not be charged by the lender for any deferrals granted by the lender.

~~(4)(5)~~ The licensee may include in the principal amount of any loan:

(a) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan;

(b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any

1 instrument securing the loan;

2 (c) bona fide fees or charges related to real estate security paid to third parties;

3 (d) fees or premiums for title examination, title insurance, or similar purposes, including survey;

4 (e) fees for preparation of a deed, settlement statement, or other documents;

5 (f) fees for notarizing deeds and other documents;

6 (g) appraisal fees;

7 (h) fees for credit reports; and

8 (i) fees paid to a trustee for release of a trust deed.

9 ~~(5)(6)~~ (a) Other fees may not be directly or indirectly contracted for or received by any licensee except  
10 those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made  
11 for the purpose of or with the effect of obtaining fees in excess of those authorized by this chapter. If any amount  
12 in excess of the fees permitted by this chapter is charged, contracted for, or received, the licensee shall forfeit  
13 to the borrower a sum that is double the amount that is in excess of the fees authorized by this chapter.

14 (b) This section does not apply to fees for services rendered in connection with a loan after the loan has  
15 been consummated and if the borrower's participation in the services is strictly voluntary."  
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17 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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